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**Sent:** Thursday, June 16, 2011 11:03 AM  
**To:** Mike Kowall  
**Cc:** Mike Murray  
**Subject:** NITC user fees

Senator Kowall:

Yesterday in committee I was asked how tolls will be set under SB 410. I'm afraid my response created some confusion and I am writing to provide some clarification.

SB 410 permits user fees (i.e., tolls) to be fixed by the Michigan authority (and, therefore, by the joint authority) OR for the joint authority to contract with the concessionaire to fix the fees. Whether the joint authority retains the power to set the fees or contracts with the concessionaire to do so, the fees must be set with due consideration for certain costs and obligations set forth in section 21 of the bill. In addition, were the joint authority to contract with the concessionaire to set the fees, the fees would also be subject to any terms required by the joint authority under the public-private agreement.

In an availability payment deal, where toll revenues/traffic risk is not transferred to the concessionaire, the concessionaire normally does not set the toll rates. The joint authority would set the tolls, with, in the case of the NITC project, Canada picking up the tab for any shortfall between the toll revenue and the required payment.

The relevant provisions of the bill are set forth below. I hope this email helps to clarify how tolls will be established under SB 410. If you have any additional questions on this topic, please let me know.

Sincerely,

Brian Calley

Section 7(8)(g) provides that the authority may "fix, revise as necessary, charge, enforce, and collect user fees and other charges for the use of, or contract with a private entity to fix, revise as necessary, charge, enforce, and collect user fees and other charges for the use of a crossing."

Section 11(1) allows activities of the authority to be exercised jointly with a public agency of Canada pursuant to a governance agreement, including through a separate legal or administrative entity (i.e., a joint authority).

Section 13(1) provides that a public-private agreement "shall include terms designed to protect the public interest and assure accountability of a concessionaire to the authority and a public agency of Canada."

Section 14 states "A governance agreement or a public-private agreement shall not authorize any of the following:...(d) This state, any of its political subdivisions, the department, or an authority, using state funds to make an availability payment. This subdivision does not restrict a public agency of Canada or a separate legal or administrative entity created under a governance agreement from making availability payments repayable from qualified revenues if authorized under the public-private agreement and the governance agreement." ("Qualified revenue" includes tolls, the Canadian contribution, and federal money received in aid of the project.)

Section 21(1) provides that "User fees and other charges collected under this act shall be determined and adjusted with due consideration for the amount required to pay project costs, including reserves, to pay bond and other authorized obligations, to maintain reserves for those purposes, and to repay any Canadian contributions, as provided in the governance agreement and public-private agreement."